



SENATE NATURAL RESOURCES
COMMITTEE NO. 3
DATE 3-19-07
BILL NO. HB 205

208 North Montana Avenue, Suite 203 • Helena, MT 59602
Phone: 406-443-4032 • Fax: 406-443-4220 • Toll Free: 800-477-1864
Email: mtmar@montanarealtors.org • Web: www.montanarealtors.org

Issue Brief

3-19-07 Glenn Oppel

House Bill 205 – Revise controlled ground water laws

Introduction

The bill presently before the Senate Natural Resources and Energy Committee would significantly alter the process of petitioning for, designating, and administering controlled groundwater areas presently set forth in Mont. Code Ann. § 85-2-506 and § 85-2-507. As amended in the House, HB 205, sponsored by Rep. George Everett (R-Kalispell), would lay out criteria for a correct and complete petition for a controlled groundwater area, set specific timelines for processing of a petition, and provide for any contested case hearings to proceed according to the contested case provisions of the Montana Administrative Procedures Act ("MAPA"), Mont. Code Ann. Tit. 2, Ch. 4. Pt. 6.

During its January 9, 2006 conference call, the Montana Association of REALTORS® Legislative Subcommittee voted to support HB 205 as amended. This issue brief provides a summary of the major proposals of HB 205 and discusses the potential impacts and advantages of HB 205 in making the controlled groundwater area designation process more informative, productive, and predictable for petitioners, objectors, and landowners.

Bill Summary

- Increases the number of water users required to sign a petition from the less of 20 or one-fourth of users in the proposed controlled groundwater area to 51 percent of the permit holders, certificate holders, and claimants of groundwater in the proposed controlled groundwater area.¹
- Requires that a petition be determined to be correct and complete before the Department of Natural Resources and Conservation ("DNRC") can proceed with the petition and sets out specific criteria that must be supported in the petition by "substantial credible information and analysis and scientific data...."²
- DNRC must determine whether the petition is correct and complete within 60 days of receipt and, if the petition is not correct and complete as initially submitted, DNRC must identify deficiencies and the petitioner then has an additional 60 days from the date of such notice to correct the petition.³
- Requires notice of the petition, including the name and address of each signing petitioner, to all landowners with the proposed controlled groundwater area.⁴ Costs of providing such

¹ HB 205, 1:20-22.

² *Id.* at 2:7-11.

³ *Id.* at 2:15-19.

⁴ *Id.* at 2:23-29.

notice are paid by the petitioner.⁵

- Sets a deadline for objections to the petition for 90 days after notice that DNRC has determined that the petition is correct and complete.⁶
- Changes the time for publication of the notice of the petition and opportunity to object from three successive weeks not less than 30 days before hearing to two successive months not less than 60 days before the objection deadline.⁷
- Allows DNRC to serve notice on any real estate company that may be interested or affected by the proposed designation or modification.⁸
- Requires service of notice on all petitioners.⁹
- Requires a copy of the petition and notice of the opportunity to object to be served on all owners of property partially or wholly within the boundaries of the proposed controlled groundwater area.¹⁰
- Requires DNRC to grant or deny the petition within 60 days of the end of the objection period if no objections are received or to assign the petition to a hearing officer for a contested case proceeding under MAPA if objections are received within the objection period.¹¹
- Costs of notice, publication, hearing, and implementation of any resulting controlled groundwater area order are to be paid by the petitioner.¹²

Advantages of HB 205

- Requires specific facts to be alleged in the initial petition.
- Requires that a petition be correct and complete before DNRC can take further action.
- Increases local input by providing notice to all affected landowners.
- No budgetary impacts on DNRC¹³ and may actually reduce DNRC expenditures by requiring petitioners to bear the expenses associated with notice, publication, hearing, and implementation of any resulting order.
- Sets up a more specific timeline for processing of a petition and puts in place a procedure for hearing contested petitions, which would allow for discovery prior to hearing and, consequently, better preparation and a more efficient hearing.

⁵ *Id.* at 4:18-20.

⁶ *Id.* at 2:30-3:2.

⁷ *Id.* at 3:15-18.

⁸ *Id.* at 3:30-4:2.

⁹ *Id.* at 4:3.

¹⁰ *Id.* at 4:4-9.

¹¹ *Id.* at 4:10-17.

¹² *Id.* at 4:18-20, 7:18-19.

¹³ See, HB 205 fiscal note.